

1 SAN FRANCISCO, CALIFORNIA, NOVEMBER 6, 2002 - 3:03 P.M.

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3 ADMINISTRATIVE LAW JUDGE REED: We're on the record.
4 This is the time and place for the prehearing conference in
5 Rulemaking 93-04-003, et al., known as the Section 271
6 docket. Our specific focus this afternoon is California
7 Public Utilities Code Section 709.2.

8 I want to make a few introductory comments, and
9 then I have a few questions. Commissioner Brown has some
10 remarks, after which I have some assignments that I want to
11 hand out. And then I want to hear from each of you more
12 fully, if you want to speak. And then we'll discuss the
13 next stages -- or stage.

14 We're off the record.

15 (Off the record)

16 ALJ REED: We're on the record.

17 Off the record I talked about how we will discuss
18 this afternoon what next on 709.2, because I don't think
19 that it is going to be at all possible to just sort of leave
20 it open until something -- some outside force -- causes an
21 action or reaction.

22 One of the suggestions that the Commissioner's
23 Ruling made was to move forward on a focusing of the
24 safeguards, and an asking of the parties: are they enough?
25 Do they need enhancements? And are there any further --
26 further safeguards that would be helpful?

27 I think the dilemma in this is that so much of
28 709.2 requires looking into the future. And we'll have to

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1 make best guesses on how to incent positive behavior, and
2 discourage negative behavior.

3 Commissioner.

4 COMMISSIONER BROWN: Yes. Thank you.

5 When the Commission passed the 271 order, the
6 Commission expressed an overall impression that Pacific Bell
7 was entitled or ready for long-distance service under the
8 law. However, there were remaining issues that were set
9 forth in 709.2 which Judge Reed found wanting. And, as a
10 consequence, we really had kind of a split verdict.

11 In terms of the federal assessment, we felt that
12 there was substantial compliance.

13 With the state standards, Judge Reed and I --
14 because I adopted her findings -- came to the conclusion
15 that Pacific had certain things that it had to do or satisfy
16 before it could be allowed to have intrastate long-distance
17 service.

18 Now we are at this crossroads, where it is
19 altogether possible that Pacific Bell may receive FCC
20 approval, and we have this other issue dangling. I would

21 like to avoid that issue if it's at all humanly possible,
22 because it does create a conflict between state and federal
23 authority. And I think it would really -- it would not
24 benefit anybody to have this matter be a question mark in
25 the courts.

26 To me, as I expressed in my Commissioner's
27 Ruling, it was very important that we address ways of
28 mitigating or preventing the issues that were left open

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1 under 709.2; specifically, whether there was anticompetitive
2 behavior, or whether there is likely to be anticompetitive
3 behavior in the future, whether there's cross-subsidization,
4 and whether there is unfair harm to the competitors.

5 I believe that what we can do is we can set forth
6 or we can structure certain mitigators that will give
7 confidence to the competitors that that is not going to
8 happen, and confidence to the Commissioners when they make a
9 decision whether or not to approve the 709.2 application.

10 So, with that in mind, what I would suggest we do
11 is think hard about practical solutions which will benefit
12 everybody; in other words, allow the competitors to compete
13 fairly, and allow Pacific Bell to compete in the
14 long-distance market, because, you know, one way or another,

15 it's probably likely to be there.

16 With that in mind, too, I hope we don't have to
17 revisit the issues that were set -- that were presented in
18 271. I mean, I don't think we have to go through the OSS.

19 Many of the major competitors expressed to me at
20 the time that if we could just lower the UNE rates, the
21 remaining objections would be largely dealt with. I have a
22 feeling that we -- that we have to get past that, and focus
23 narrowly on the 709 issues, with the idea of completing the
24 work here. And I think that that will be to everybody's
25 benefit.

26 With that in mind, I'd just like to go off the
27 record.

28 ALJ REED: Off the record.

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1 (Off the record)

2 ALJ REED: On the record.

3 You know, I can certainly understand, you know,
4 in terms of both positions. I think the competitors spoke
5 loud and clear in their papers that they just didn't believe
6 that safeguards could work.

7 I think that, in the way that the parties in this
8 proceeding -- certain of you -- have worked in other phases

9 of the overall 271 -- and I constantly go back to
10 performance measurements, where -- I mean, I think the way
11 that those of you that are active in the performance
12 measurement proceeding, the way you have collaborated on
13 something of that magnitude is incredible when you step away
14 from that and look at how much miscommunication occurs,
15 let's say, on this level.

16 And I think to do what I propose -- which is
17 build the model, the safeguards -- you're going to have to
18 do some of that. And I think within that, there can't be
19 the presumption that because there are rules and because
20 there are laws, there's not a problem. It is helpful for
21 you to identify those rules, but to also spend a little bit
22 of time showing how you are following those.

23 One of the things that was sorely missing from
24 this particular inquiry last December was the taking of that
25 little bit extra amount of time to just completely and fully
26 make the case; and that was not to say it wasn't there, but
27 I think that, you know, at that time, the competitors spent
28 some time making the case, presenting it. And, you know,

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1 I'm not interested in putting any words in the company's
2 mouth, but I'm sure if it was all to do again, that more

3 time would have been spent addressing point by point.

4 The record -- and again, there are different
5 interpretations about what the record says, but it was
6 lopsided, because allegations got built that just were not
7 responded to; and again, that's not to say they couldn't
8 have been, but they weren't. We're not going back over
9 that, but the piece of that that I think is important in our
10 going forward is: there are still concerns. There are
11 still miscommunications.

12 It would be beneficial to all of you --
13 competitors, Pacific -- to talk about those, address them,
14 just meet them head to head. And I say that because we need
15 to look at them. We need to examine them. We need to
16 facilitate you all solving those, but I have to say -- it is
17 a question that the FCC asked, too -- why can't these
18 parties communicate? Because, as I said, I've seen you do
19 it so well, I know you can do it.

20 And I think that this is the time, this is the
21 place it needs to be done, because if it doesn't get done
22 here, then it will be done, and, as I said, you'll get to
23 comment on it being done. And we will take, you know, to
24 heart what you've told us, but most of what has been said
25 has been just the list of particulars of how bad treatment
26 has been, and a request -- sort of a repetition of, I think,
27 comments that have been made earlier on.

28 Yes, I mean, I think I've said numerous times:

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1 the Commission wants these major proceedings that are so
2 important to all of you to be resolved. It can happen here,
3 but you know, the pressure is on in those proceedings.
4 There is, of course, a wish list of proceedings that people
5 desire. It can happen here. And it is impractical to hold
6 up resolving and addressing 709.2 until the very long list
7 of all the things that need to be done in the world, almost,
8 are completed.

9 Now, I think one of the bluntest things I can say
10 about this is: this is a way, acting together, that you all
11 can get what you need, maybe not every particular thing that
12 you need, but I think you can get your major needs met, and
13 that way, not run the risk of getting nothing. Okay.

14 COMMISSIONER BROWN: Just a final thing. Yes. I
15 can't emphasize enough that every party -- I underscore
16 "every party" -- should participate in this effort. I mean,
17 whether it's, you know, suggestions about scripts -- I
18 remember Theresa Cabral's comment last year about the
19 difference between warm calls and cold calls, and issues of,
20 you know, how the marketing is sequenced in relation to
21 customer-service issues, issues of, perhaps, resolution of
22 beefs between competitors and the incumbent utility.

23 So these -- you know, what we're doing is we're
24 trying to nail down the basis of real fair competition on

25 all sides.

26 ALJ REED: Okay. The assignment I want to give out
27 today is: I'd like you all to work collaboratively on an
28 expedited dispute resolution process. I mean, I think

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1 that's something that is critical.

2 And prior to the draft going out, I mean, I think
3 you all were encouraged to move forward on that. And I mean
4 I know that you did some work on it, had some meetings,
5 maybe, you know, reached some sort of preliminary drafts of
6 things, but apart from hearing just from one party -- I
7 think it was Pacific -- Pacific felt that there was
8 something you agreed on, but I haven't heard that from any
9 of the competitors.

10 No competitor -- I mean, it was telling that when
11 Pacific said that it felt that it had handled that, that it
12 had reached an agreement on an expedited dispute resolution
13 process, no one else addressed that issue in comments on the
14 draft. And I certainly didn't feel comfortable with
15 assuming that silence meant, you know, acquiescence.

16 And in looking at the comments on the assigned
17 ruling, the fact that people still feel very strongly about
18 things that have happened in the recent past, they feel are

19 happening now -- there has to be a way that that can be
20 addressed.

21 Now, if you've already discussed some kind of
22 process, you know, maybe what this assignment requires is
23 just pulling that out, examining it, seeing if it could be
24 workable, if it's something you all can agree on.

25 I think I'm going to turn this over to you all
26 now, but one of the things that I would like that would be
27 helpful to the Commissioner, Staff, and I is not just,
28 again, a list of the particulars, but some ideas of how to

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1 address these continuing concerns.

2 On Pacific's part, I have never believed that any
3 of this was about the company not having the information.
4 The company has the information. It now has to be about
5 freely sharing it, because that will benefit you, Staff, me,
6 the competitors.

7 And within that, when questions are asked, please
8 do not assume that from that comes a negative. We ask you
9 to educate Staff, so that Staff will know, because what we
10 do not want to happen from this is that we go forward, 271
11 authorization is given, and Staff just really doesn't know
12 what SBC Long Distance is doing. That doesn't help you.

13 That doesn't help Staff.

14 So I think it's going to be important for Pacific
15 to -- if introductions have not already been made -- make
16 sure that Staff knows the SBC LD people, and that they start
17 knowing what kinds of ministerial regulatory things -- how
18 it's going to work, so they will know, so that this can work
19 smoothly.

20 The joint marketing directives under the
21 decision -- it's critical that you work with Staff, and you
22 just keep them fully informed.

23 What would not be a good thing is, because of
24 time conflicts -- I don't know -- shyness -- I don't know --
25 that this not be worked on. And when Staff is asked what
26 about the scripts, "Are they in compliance," and Staff says
27 "No" -- that's not something you want to happen. So please
28 work with them.

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1 Now, I have some questions that concern the
2 auditing tasks, if you all are aware of whether the timing
3 has already been set on the audits, when they will take
4 place, or if that's something that is yet to be determined.

5 MR. KOLTO: Which audits in particular?

6 ALJ REED: I'm talking about the audits that are to

7 take place for SBC Long Distance. Is there a time line
8 that --

9 MR. KOLTO: This is Joe Carrisalez, from SBC Long
10 Distance.

11 ALJ REED: Stand up, Joe. Spell your name for the
12 reporter.

13 MR. CARRISALEZ: C-a-r-r-i-s-a-l-e-z.

14 And I believe that it will occur next year. I
15 don't have the actual month and day, but it will occur next
16 year. It's a biennial audit. It occurred once we had nine
17 months after we entered into Texas. So we are scheduled to
18 have the biennial audit next year.

19 ALJ REED: Okay. Thanks.

20 COMMISSIONER BROWN: Thank you.

21 ALJ REED: Okay. Does anyone want to go first, or
22 shall I start in alphabetical order?

23 Mr. Severy, why don't you go first?

24 MR. SEVERY: In alphabetical order.

25 COMMISSIONER BROWN: Reverse alphabetical order.

26 ZTel actually would do that.

27 MR. SEVERY: Thank you, your Honor. Just a few
28 preliminary comments.

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1 Throughout this proceeding, which really began in
2 earnest mid 2001, we have focused on the 709 issues as an
3 interexchange carrier.

4 We are the second largest long-distance company.
5 And we focused on those aspects. In our view, 709.2 focuses
6 on issues that impact long-distance industry, long-distance
7 carriers, competition in the long-distance market.

8 And we, under the structure of the statute, we
9 have focused on those issues that we believe, through
10 experience and through present conduct, could affect, do
11 affect, will affect competition in the interexchange market.
12 And we focused primarily on access, because access is what
13 interexchange carriers need to reach their customers to
14 provide service. And historically for the last 20 years,
15 that has been the area where Bell operating companies can
16 and have discriminated against long-distance companies.

17 That's why we had an antitrust decree lawsuit.
18 That's why we had a divestiture. That's why we had an
19 antitrust consent decree prior to the Act. It's why the
20 California Legislature imposed some safeguards when they
21 adopted 709.2.

22 Switching gears, on the local side, the
23 Commission has done a commendable job in looking at the
24 price of access, the cost of unbundled network elements, in
25 the provisioning through monitoring the quality of operation
26 support systems and monitoring the performance measures and
27 incentive program.]

28 Those are all safeguards, protections in place to

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1 make sure that competition can emerge and can take place
2 fairly in the local market.

3 We have problems in the long-distance market
4 where we don't have an analogue. And for the last year and
5 a half we have addressed those issues. And I know you don't
6 want us to revisit our wish list or talk about a list of
7 particulars, but the reality is that that access in
8 California is priced way too high.

9 Pacific Bell's rates are double their intrastate
10 rates for the identical service that forces our exchange
11 carriers to subsidize Pacific Bell's offering of long
12 distance service. It creates a war chest that they can use
13 to compete against us. We've recited the litanies of
14 problems.

15 On the provisioning side, we talk about problems
16 in the performance of special access. Another large
17 interexchange carrier recently filed a petition with the FCC
18 focusing on pricing and provision of specific access in the
19 interstate jurisdiction.

20 So our whole goal in this process is to get the
21 Commission to focus on the safeguards that address the
22 particular problems in the interexchange markets, that being
23 the provisioning and pricing of access. And we know other

24 parties have focused more on marketing issues, and those are
25 legitimate concerns as well.

26 If you ask what are some tangible safeguards that
27 can be implemented readily, quickly; those areas that can be
28 focused upon, and there are a lot of reasons for this, but

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1 the Commission has not focused on intrastate access in six
2 or seven years. Pacific Bell could file a tariff tomorrow
3 lowering their intrastate access charges to their interstate
4 level. We wouldn't object to that, and our objections here
5 would probably go away.

6 So we don't need a long collaborative to convince
7 them what the right thing to do is, but there are some
8 things that could be done readily: tangible safeguards that
9 would address, from our perspective, the prominent problems
10 that Section 709.2 is intended to address. And so our list
11 of particulars is short, can be readily addressed, primarily
12 through actions by the incumbent. There is not a whole lot
13 we can do to compel performing in those areas.

14 So we're happy to discuss them further. It
15 should be no secret what our views are and have been. We
16 have been forthright and forceful in articulating those in
17 the last year and a half. From our perspective, if those

18 issues are fixed, most of the 709.2 issues should be
19 alleviated.

20 ALJ REED: Okay. Not discussing, moving away
21 specifically from intrastate access charges, could you
22 discuss the access service performance measurement, the
23 concept? Is that something that you have discussed with
24 Pacific?

25 MR. SEVERY: My understanding is that has been
26 discussed on a preliminary basis as part of the upcoming
27 review. It is something that, if it isn't resolved mutually
28 in a collaborative fashion, then I believe some competitors

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1 would ask the Commission to take that on.

2 In our comments in this proceeding last year, we
3 filed one model, one template of how that could be done.
4 There has been a lot of movement progress in the industry
5 over the last year and a half, so that whole notion of a
6 performance measurement program for special access is better
7 developed, more refined, and we're happy to discuss, I would
8 say, the current industry perspective on that.

9 And, again, that is not a secret. It has been
10 addressed in a number of places around the country, and SBC
11 certainly is familiar with it. But it could be handled

12 through that existing process if Pacific is willing to do
13 so. So far my understanding is that they have not been.
14 And that process has been delayed a bit.

15 So that is one possible forum; but it is one
16 thing to say that that is a possible forum where it could be
17 discussed and then six months from now we're told once again
18 it is not something we're interested in pursuing.

19 ALJ REED: Okay. In terms of intrastate access
20 charges, now, I know that your position is this isn't a big
21 matter, it can be done directly and easily. I know that you
22 have talked to the Commissioners about it.

23 Could you speak to me about what I'm sure you've
24 heard from some or all of the Commissioners about how they
25 work out the fact that it is one small piece, but it is the
26 piece of a much larger enterprise that they feel is one
27 enterprise cannot be examined and approached in isolation.
28 If they work this one piece, they must work the entire piece

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1 and the resources and the time that that will take.

2 MR. SEVERY: Actually I have not had any such
3 discussion with Commissioners.

4 Several years ago, MCI filed a complaint, and
5 complaint proceedings are completely -- subject to complete

6 ex parte communications. That complaint was dismissed in
7 part based on the Commission's assurance that that issue
8 would be taken up as part of the business plan for -- I
9 think it was 1998. We have not raised that issue formally
10 with the Commission since.

11 I do know that through -- that the FCC has taken
12 action and compelled the Bell Companies, including Pacific,
13 to lower its interstate access charges about 70 percent over
14 the last three years. This Commission could do the same.

15 We also know that --

16 COMMISSIONER BROWN: Excuse me, are you suggesting
17 that this Commission could lower interstate access rates in
18 addition to what the FCC is doing?

19 MR. SEVERY: No. Intrastate access charges. Our
20 fundamental position is that access, like other services,
21 should be priced at cost; it clearly is not. If the price
22 of network elements -- the technology is dropped so that the
23 price of unbundled network elements is dropped -- clearly
24 the price of access has dropped in recent years. At the
25 Federal level, Pacific has dropped its rates 70 percent.

26 We know that SBC has voluntarily lowered UNI
27 prices in a number of states, as other Bell Companies,
28 really as a means of getting 271 approval. So it is a

1 carrot-and-stick situation. If they know they have to price
2 their access services at the appropriate level to get the
3 authorization they want, they've shown they can do so.

4 As I said, access, like other services should be
5 priced at cost. What I'm saying, even on an interim basis
6 before we get to the nitty-gritty of cost, it would be
7 straightforward for them just to set their intrastate prices
8 at interstate rates, the same rate they charge at
9 interstate. That would make us -- that would satisfy us in
10 the near-term. That would be a huge improvement, and they
11 could file a tariff tomorrow.

12 ALJ REED: Again, appreciating that your focus is the
13 interstate access charges, what I'm asking is: What is your
14 response to the policy dilemma that you can't isolate that
15 one piece without doing a complete examination?

16 MR. SEVERY: I think that the way the Commission has
17 proceeded on rates over the last decade, that is not
18 essential. The argument is that historically access
19 subsidized universal service. The Commission had a
20 universal service proceeding several years ago and
21 specifically identified the cost of providing universal
22 service in California, identified a fund and that issue is
23 taken care of.

24 Under the Telecom Act, there should be no
25 implicit subsidies anymore. So the historic -- a historic
26 reason for keeping access charges high no longer exists.
27 The Commission imposed one of the elements -- I forget what

28 we call it here -- the RICK or the NICK -- in California,

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1 several years ago, and admitted at the time it was not cost
2 based, it was an arbitrary element. Removing that by itself
3 takes care of most of the differential between the
4 interstate and intrastate rate.

5 So I'm not sure what other policy argument
6 exists?

7 ALJ REED: You don't think that making a change in
8 that would necessitate any other examination of kind of an
9 overall rate design or anything?

10 MR. SEVERY: Not in my opinion. In fact, in IRD
11 there was a rate rebalancing where some of that took place.
12 Pacific will obviously argue there are all sorts of internal
13 subsidies and other things going on that need to be
14 addressed.

15 But I think what has to be addressed is the
16 universal service in California, and having a federal
17 requirement that all subsidies be explicit and separate.
18 There no longer is any rational for keeping intrastate
19 access charges so far in excess of their actual cost.

20 We know, given what has happened to the
21 intrastate prices, that costs have come down, prices have

22 come down. And there is no reason that the same thing
23 should not have be in parallel on the intrastate basis. And
24 until they do, we've got all the competitive problems that
25 we've highlighted earlier.

26 ALJ REED: Ms. Johnson.

27 MS. JOHNSON: Just to dovetail on what he said, AT&T
28 has a petition on file in October of 2001 asking the

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1 Commission to look at access rates. We have in fact had
2 discussions duly noted and ex partes about that docket.

3 My concern is here we are over a year later of
4 the filing of that petition, and we still have no action on
5 whether the Commission is going to look at it.

6 This is very frustrating that this is part of a
7 bigger piece. I agree with what Mr. Severy said, but if it
8 is part of a bigger puzzle, let's get on with it. If we're
9 going to do it, let's do it. Let's not sit around and let
10 these petitions languish, and meanwhile the subsidies go on
11 and on and on and it creates dilemmas for us as Pacific
12 enters the long-distance marketplace with a distinctive
13 competitive advantage. I think there is some confusion; we
14 filed that docket.

15 Beyond that, I will just say that AT&T is more

16 than willing to sit down and negotiate, discuss, collaborate
17 on what solutions we might see to prevent possible harms. I
18 think that there is the potential for agreement on those.

19 The big stumbling block I see is when I read
20 things Pacific has filed, they seem to believe 709.2 doesn't
21 apply to them, that preempted is moot, that they don't have
22 to do anything further. I think if that is the attitude
23 that comes into collaboration, it is very difficult to
24 collaborate against a party who says I don't have to do
25 anything at all.

26 I think AT&T in its comments that we filed this
27 month presented some -- or last month -- concrete things
28 that we would like to see that would provide protections,

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1 additional protections. And which, frankly, would go a long
2 way towards mitigating the harm, and more than willing to
3 discuss provisions on those or possible amendment. But it
4 has got to be a discussion that takes place not: No, no, we
5 can't do that; don't have to do that; federal law says we
6 don't have to. That is the wrong attitude, in my opinion.

7 If our comments were read as saying we should go
8 back and start over, that is not what we intended. What we
9 tried to convey was some very specific solutions having to

10 do with getting that docket open, joint marketing
11 restrictions and moving this access docket forward. And I
12 agree with Mr. Severy that that can be done with the stroke
13 of a pen.

14 ALJ REED: Mr. Tobin.

15 MR. TOBIN: Thank you, your Honor. Jim Tobin. I'm
16 representing today Pac-West Telecomm and Working Assets.

17 I would like to first go back to your description
18 of where we are and express a little bit of a dismay about
19 the way it has been characterized; and see if I can try to
20 put a different perspective on it from the point of view at
21 least of these two competitors.

22 From our point of view, the current status of
23 things is that Pacific Bell filed a motion asking the
24 Commission to make certain findings that are required under
25 Section 709.2 of the Public Utilities Code in connection
26 with an application it wanted to file with the FCC in
27 Washington.

28 The Commission on September 19th denied the

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1 motion. Nobody has filed for rehearing of that decision,
2 and so the motion is denied. The Commission is under, at
3 this point, no legal obligation to do anything.

4 Now, you can have a political desire to do
5 something and you may well; but as a matter of law -- what
6 I'm trying to say is the motion has been denied. That is
7 where things stand. Pacific did not object or seek
8 rehearing of the denial of that motion. So that is where
9 the ball is, from our perspective.

10 Now, the fact that Pacific Bell wants to get into
11 the long-distance business is both understandable and
12 permissible, that is the real world. And they can file any
13 application they want to in Washington, D.C., but that
14 doesn't establish any obligation of this Commission to do
15 anything except comply with state law; that is your
16 obligation.

17 So from our perspective, the proper process to
18 follow is fairly clear. You mentioned it is just not
19 practical to sit back and wait for some outside power to
20 come in and force some hand; I don't remember your exact
21 words, but that was the essence of the point being doing
22 nothing is not an acceptable option.

23 The outside power involved would be Pacific Bell,
24 and what Pacific Bell would be doing would be filing a new
25 motion. They would be saying we filed a motion with you a
26 couple of years ago, you looked at the record in a long,
27 drawn-out proceeding and you denied our motion. We think
28 there is adequate evidence on which you should grant such a

1 motion. So we're renewing our motion, and they can file
2 whatever evidence they deem appropriate to support that
3 motion and then the proper procedures would be followed to
4 determine whether that motion would be granted or denied.
5 That is the proper procedure to use to move the ball along.

6 Now, what is the legal context in which that
7 procedure would be happening? One is that there is nothing
8 in the Telecommunications Act or the Communications Act, as
9 modified by the '96 Telecom Act, which takes away this
10 Commission's jurisdiction over intrastate services; there is
11 no such thing. In fact, the act is quite explicit that it
12 does not do that.

13 So this Commission has jurisdiction over whether
14 or not or under which conditions Pacific Bell will offer
15 long-distance service in the State of California.

16 The Commission, in a case predating the recent
17 September 19 decision, granted SBC Long Distance a CPCN on
18 the assumption that the 709.2 question would be resolved
19 eventually in the 271 case. In fact, the 709.2 question was
20 resolved in the 271 case. The motion was denied; the
21 Commission found that it could not make the required
22 determinations.

23 That undercuts any legal basis that that existing
24 CPCN had; and therefore, for all practical purposes, I think
25 what the Commission should have done in the September 19
26 decision was follow its logic to the conclusion and make it

27 clear that that CPCN was no longer effective. That is an
28 implication of what has been done, that has not yet been

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1 explicitly stated by the Commission. That is one thing you
2 need to do to clarify the situation.

3 Nonetheless, in that circumstance, Pacific would
4 need to be applying for a certificate of public convenience
5 and necessity like any other entity that wanted to provide
6 long-distance service in California has to do. There is a
7 process for that; those procedures are all set up. Whatever
8 you do in this case, you have to do it within the
9 constraints of the law. That is -- we're not making up the
10 law. We didn't pass, for example, Section 1708 of the
11 Public Utilities Code; that is a statute that is on the
12 books that is a constraint on your action.

13 What the section, by the way, provides is that if
14 the Commission wanted to modify the previous decision it can
15 do so by following the hearing procedures, as in the case of
16 the complaints. That is what you would need to do to modify
17 the September 19th decision. That is what the law requires,
18 and those to me are the procedures to carry out the law.

19 Now, the fact that those hearing rights exist,
20 and if those hearing rights are not granted and

21 appropriately implemented, a party has a right to go to
22 court and appeal the decision. And hopefully the soundly
23 based arguments are heard, the Commission's decision will be
24 reversed or overturned. That doesn't happen if people
25 settle, if somebody is entitled to a hearing but they work
26 out a compromise with the other party, they don't have to
27 have a hearing, they settle their differences.

28 So I'm not at all going away from the course that

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1 you are presenting in terms of talking to see if things can
2 be worked out. All I'm saying is it has to be done in the
3 contexts of what happens if they weren't, what does the law
4 provide in the procedure. One of the troubling things I
5 heard you say was this has to be done in the context of -- I
6 took it to mean parties that are objecting to the granting
7 of Pacific Bell's long-distance authorization running the
8 list of quote, getting nothing.

9 Well, I think you need to make it very clear that
10 there is also a risk on the other side. That if the burden
11 of proof that Pacific has to support its motion isn't met,
12 or in the alternative it doesn't reach an appropriate
13 arrangement with the affected parties that they're all
14 willing to say serves their interest, then the nothing that

15 happens is no long-distance authorization. That is what the
16 law provides. So that is the context in which these
17 discussions should be held.

18 I personally think it is a good idea to approach
19 this, I would say, from the point of view from real-life
20 competitors. There is a certain nitty-gritty side of
21 competition that isn't reflected in a regulatory theory
22 hoping everyone will go to zen center and work together, but
23 that is true in almost every docket we have. So it is a
24 realistic thing that needs to be dealt with.

25 To follow up a little bit on the substance of
26 that, without getting into the details, I think your point
27 about an expedited dispute resolution process is a good one.
28 There was an earlier attempt in this docket to do that. I

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1 would simply point out there is -- they were a part of the
2 criteria in Section 709.2. It might be a good thing; it
3 probably is a good thing. But it doesn't go any direction
4 at all to satisfy the criteria.

5 I would say with respect to the concerns of my
6 clients, Pacific has never approached us at all with respect
7 to what issues could be resolved in a manner that would make
8 you more comfortable with our getting into your business.

9 Our current feeling about it is that if this occurs, they
10 will be put out of business, plain and simple. That is
11 something that if you are that person you fight hard to stop
12 from happening.

13 So I'm not, again, objecting to your idea of
14 trying to work issues and protections through. We -- as a
15 matter of fact, you noted in your draft decision, the
16 Commission's decision, that we never did say they shouldn't
17 get into the long-distance business. What we did is propose
18 a certain set of mitigations and criteria that we thought
19 might be sufficient.

20 Well, the Commission decided not to adopt them
21 all; they weren't all adopted. So that is a problem, that
22 is a real problem. It is not a problem as we sit here
23 today, because Pacific's motion was denied. So the
24 real-life potential of the harm isn't yet happening. If
25 that circumstance were to change, that would be a very
26 serious problem.

27 So I wanted to kind of strongly reinforce the
28 context that this should be occurring. And I think that if

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1 there is a risk to be run, that something is going to be
2 done wrong.

3 I would just say, from a regulatory standpoint,
4 you should think: Which way should I err? If the way I err
5 is to come up with quote, some remedial actions which an
6 argument can be made, maybe will help, but six months or a
7 year from now you find out they didn't, then where are you?
8 So it is a short-term kind of perspective to ignore that
9 question.

10 All of that being said, I think it is a good idea
11 to encourage the parties to work together to try to resolve
12 this. And if they can do that, I think the need for normal
13 hearings conceivably could be eliminated because the parties
14 will have reached a settlement. I would urge you, the
15 Commission, to urge all parties to make that happen.

16 But in the absence of such a settlement, the
17 answer is the law provides clear procedures that should be
18 followed.

19 COMMISSIONER BROWN: Jim, I could just address myself
20 to that. I think in my introductory remarks I said that
21 there was a possibility that there could be at some point a
22 conflict between federal and state law and on this issue.
23 If that is in fact the case, or a possibility, what we
24 probably should do is try to address that without
25 implicating that particular issue. So I think this is one
26 of the reasons that I initiated this particular proceeding.

27 MR. TOBIN: I'll agree with that point, Commissioner.
28 I would say a couple of things: One, I believe we briefed

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1 it in this case; if not, we can. The federal act is quite
2 clear. It doesn't prohibit the state from imposing
3 conditions on and/or granting CPCNs for intrastate
4 operations such as a Bell company like Pacific. There is no
5 ambiguity in the federal law there.

6 The issue -- this Commission often bumps heads
7 with federal agencies, whether it is FERC, FCC or whatever,
8 on interpretations, on jurisdictions it feels may be going
9 too far. I can understand your point in wanting to avoid
10 the issue.

11 It doesn't strike me that this Commission is
12 taking the position that there are certain conditions we
13 need to impose on our intrastate CPCN of this company, given
14 the market situation in California is at all in conflict
15 with federal law. And I think it is a little bit of a
16 goblin threat that is being thrown out there that some
17 humongous problem might exist. My impression --

18 COMMISSIONER BROWN: I talked to the FCC.

19 MR. TOBIN: I don't think they want to step on your
20 jurisdiction any more than --

21 COMMISSIONER BROWN: No, they don't want to step on
22 us, they want us to clean it up.

23 MR. TOBIN: I would agree with that.

24 ALJ REED: Ms. Cabral?

25 MS. CABRAL: No comment.

26 ALJ REED: Mr. Clark.

27 MR. CLARK: Yes, your Honor.

28 My clients are certainly supportive of the

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1 establishment of procedures that will allow them
2 individually or collectively to resolve issues with Pacific
3 Bell, and are certainly anxious to and willing to work with
4 Pacific Bell and the Commission and other parties to arrive
5 at procedures that are workable.

6 Where we find ourselves having a problem though,
7 and I think it is reflected probably in the second half of
8 Telscape's comments, is that we're not operating in a
9 marketplace that is yet competitive enough for us to be able
10 to flow with our feet. We don't like what Pacific Bell
11 does, we really can't go somewhere else. We can't
12 realistically build our own cable; that is not realistic.
13 So we're in a situation where we really don't have that
14 opportunity.

15 There are a lot of rules, a lot of laws that
16 affect our relationship with Pacific Bell. And we don't
17 believe there is any reason why -- existing procedures,
18 whether the dispute resolution process that is in our

19 contracts won't work or can't work. We think they will
20 work; they do work.

21 Our problem is that in this relationship there is
22 so much that is not defined; it is perhaps addressed in the
23 Public Utilities Codes what is just and reasonable. Nothing
24 is just and nothing is reasonable; nothing is unreasonable
25 and nothing is unjust, unless the Commission says it is.
26 Our problem is getting to that point where we have these
27 issues which are, for one reason or another, impractical.
28 They are not resolvable through negotiations, and they're

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1 important enough that we need to get them resolved.

2 We have no place to go unless the Commission
3 allows us to do so. Very recently I was in a complaint
4 proceeding, and actually the fundamental issue was never
5 really addressed.]

6 But the fundamental issue was whether a certain
7 policy that Pacific Bell had in place was, in fact, just and
8 reasonable. And we were -- you know, point blank told we're
9 not resolving that in this complaint proceeding. Where do
10 we go from there? That's a big issue we have as a problem.

11 And I -- you know, I don't know. You know, it's
12 a difficult place for the Commission to be, too, because

13 you -- you know, you're looking at what we're going to have
14 an ongoing complaint proceeding every day of the week to
15 resolve those kinds of issues, but that, in fact, is -- is
16 something that we think needs to be put in place.

17 Now, we saw during the 271 process that kind of
18 thing happening. I mean, you know, there was no discrete
19 orders from the Commission that "Pacific Bell, you must do
20 that," or "CLEC, that's unreasonable." They don't have to
21 do that, but that did happen informally throughout that
22 proceeding.

23 ALJ REED: Mm-hm.

24 MR. CLARK: And it worked pretty well.

25 We see that going away. That's not going to
26 happen in that kind of a context from now on.

27 It doesn't happen with Verizon. Verizon was
28 never under the gun, like Pacific Bell, to get 271, you

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1 know. So it's -- we view that as very important, and as key
2 to a determination by the Commission that there is no
3 possibility of anticompetitive conduct, because
4 Pacific Bell, like any other carrier, is going to compete.

5 And it's -- if there's no rule or law or policy
6 that says you can't do that, then it's to their benefit.

7 Even though I may think it's anticompetitive, it -- it might
8 hurt my client, they'd be silly not to pursue it. And
9 they're going to. I wouldn't expect them not to.

10 Unfortunately, we're in this situation where
11 there aren't the economic natural economic forces and
12 controls for established rules and laws that -- of
13 competitive interaction that exist. So for that reason, you
14 know, we believe that it is important, and it is a key part
15 of the 709 process that, along with performance measures and
16 all the other things that take place, that there -- that
17 there is a commitment on the part of the Commission and/or
18 the parties to somehow ensure that problems are resolvable
19 and resolved on a timely basis and a reasonable -- no matter
20 what the answer is, as long as they're resolved and the
21 issue has been addressed, I think that can be satisfied.

22 ALJ REED: Do you think that, you know, I mean, I
23 don't know to what extent you've discussed this with Pacific
24 before, but do you think that it helps at all that Pacific
25 now is aware that you felt some elements of the give and
26 take that were occurring during the 271 were helpful, were
27 productive, you know, in terms of them possibly continuing
28 some of that?

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1 MR. CLARK: Well, I mean, I think we've told them
2 that, and you know, frankly, I mean there is the carrier
3 user forum that goes on. They are actually cooperating in a
4 lot of respects in those ways, but you do come to business
5 issues or problems that aren't resolved in that way, or --
6 or solutions that are -- you know, say, "Well, here's our
7 solution."

8 Well, we say, "That's not a good solution.
9 That's not going to work, Pacific."

10 "So that's the solution we're giving to you. You
11 can choose that or choose nothing."

12 I mean, that does happen, too. And I -- you
13 know, we do work with Pacific on an ongoing basis. Today we
14 resolved some issues that were -- and I don't think they had
15 anything to do necessarily with 271, but they were just
16 working to resolve issues and problems that we both saw we
17 wanted to work out. That happens, too.

18 ALJ REED: Right.

19 MR. CLARK: But --

20 ALJ REED: No. I mean, I think that your comments
21 were particularly helpful in terms of laying out some of the
22 constraints that an expedited dispute resolution process, in
23 terms of the design of that, has to be aware of and has to
24 think, I think, creatively how to overcome.

25 You know, I mean, I think it would be helpful for
26 you, in terms of brainstorming or making suggestions of how
27 it could be workable, you know, given the burgeoning sort of
28 atmosphere, that there are some, you know -- certainly if

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1 the larger process is guided by Commission rules and
2 decisions, what happens when there are some things that fall
3 in between a Commission rule or decision? That is more of a
4 practice, if there's any way to discuss that, negotiate
5 something like that.

6 MR. CLARK: I mean, I would think the answer to
7 that -- what we find is that we work. You know, not
8 everyone's the poor boy on the block, but -- of competitors,
9 but there is a significant disadvantage. I mean it becomes
10 -- if you're going to be in a process where you have that
11 kind of point, someone's got to be going to resolve some
12 middle ground. We're oftentimes at a -- very hard pressed
13 to be in a position where we're able to hold out, and not
14 give up. And that's what happens.

15 A lot of times, the clients say, "Fine. Let's
16 just forget about it, or maybe we'll bring it up in two
17 years, or maybe we'll just keep gathering all these things,
18 or maybe we'll bring an antitrust action," which is
19 expensive and time consuming and probably a very hard thing
20 to do. And then some of them go out of business.

21 You know, that -- I mean, those are realistic
22 issues. And not every concern needs to come before the
23 Commission on a policy decision, and a lot of them do.

24 ALJ REED: Thank you. Mr. Kukta, did you want to say
25 anything?

26 MR. KUKTA: No. I think everything that needs to be
27 said has pretty much been covered. Sprint certainly would
28 cooperate with any sort of attempt to mediate issues, or

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1 discuss what further can be done with Pacific.

2 ALJ REED: Mr. Tobin, let me ask you a question or
3 two. You spoke of the precise legal steps to be followed.
4 And I think you're right. And I think the analysis of that,
5 though, is somewhat in a vacuum. Yes, you have laid out the
6 precise legal steps, but you know that there are other
7 factors at play.

8 In terms of that -- the other factors at play --
9 are you saying that Pac-West and Working Assets itself feels
10 that it would go forward in kind of navigating the legal
11 path if, in this instance, the Commission felt that the
12 record was not all that it could have been, and with a full
13 record, who knows what the Commission would determine? Is
14 that something that Pac-West and Working Assets would just
15 be interested in pursuing, just itself, in terms of it kind
16 of prosecuting the -- any renewed motion, for example?

17 MR. TOBIN: Let me see if I understand your question

18 correctly. Assuming every other party was satisfied, would
19 Pac-West and Working Assets be willing to alone pursue their
20 legal rights under the statutes? Yes.

21 ALJ REED: Okay. Mr. Kolto.

22 MR. KOLTO: I wanted to start with one point about
23 the legal issues, and that's that I'm not going to address
24 them, because I don't think you expect us to at this time,
25 unless you state otherwise. And -- but that silence
26 obviously isn't acquiescence. We obviously disagree.

27 With respect to the assignment that you have
28 proposed to the parties, we would be more than willing to

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1 sit down with the interested parties and try to develop an
2 EDR process, perhaps based on what we developed with
3 Mr. Bateman last year, or at least starting with what we
4 developed with Mr. Bateman last year.

5 In addition, there could be some guidance to be
6 had from the local comp dispute resolution process that was
7 approved in 1995.

8 In addition, we have several other areas where we
9 can look to to find provisions that we might be interested
10 in, such as interconnection agreements, or in other
11 mechanisms like the change management process, dispute

12 resolution, or the performance measures, dispute resolution
13 processes; look at those to see if there's anything we want
14 to incorporate.

15 I don't think we'll ever get to the point where
16 we'll resolve all issues, but we could at least set up a
17 device that addresses key operational issues that involve
18 day-to-day service, and that may jeopardize the service to
19 certain customers.

20 We have been able to work through some of those
21 with the Commission, as you're well aware, in a recent
22 matter we had before you, but I realize that that strains
23 the Commission's resources, and often isn't the best avenue,
24 but we're very interested in trying to resolve this issue.

25 ALJ REED: Thank you.

26 COMMISSIONER BROWN: Excuse me. I have to leave now,
27 because I have to see the President. I have an appointment
28 with her. So I will at least -- I encourage you to keep

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1 proceeding. I'm -- I will read the comments, the ones that
2 are transcribed. And I appreciate your coming here, and I
3 appreciate the spirit in which you have all approached this
4 today. So thank you very much.

5 Excuse me, Judge.

6 ALJ REED: Thank you.

7 Mr. Kolto, could you speak a little bit about
8 going forward with respect to including Staff in the
9 discussions about the marketing directives, and at least the
10 feasibility of Staff being able to work with
11 SBC Long Distance on, as I said, some of those ministerial
12 kinds of things, just in preparation?

13 MR. KOLTO: Sure. To the extent we have not kept
14 Staff informed on key issues, whether it has to do with
15 Pacific Bell or long distance, we obviously apologize,
16 because I am sure all carriers here strive to keep the
17 Commission well informed. It not only makes your life
18 easier; it makes our life easier.

19 And as a company as a whole, not only as
20 Pacific Bell, but as the long-distance entity, we'll do
21 whatever's necessary to not only work with the Commission
22 once the issue has arisen, but to try and educate whoever
23 needs information up front, so that we can work through
24 issues before they become a problem or a dispute.

25 ALJ REED: Okay.

26 MR. KOLTO: I'm sorry. I'm sorry.

27 MS. WALES: Oh, Judge Reed, I just wanted to tell you
28 my name is Cynthia Wells. I work for Pacific Bell,

1 obviously. And I have been working with Staff regarding the
2 marketing scripts. I've had two fairly lengthy meetings
3 with them. We have someone scheduled for tomorrow. And I
4 will be bringing my counterpart from SBC LD with me to that
5 meeting. So we are absolutely committed to continuing to
6 work with Staff.

7 ALJ REED: All right. You know, one of the things --
8 and I said this earlier; there isn't, you know, a set rule
9 in place about this, but there is so much in terms of just
10 the communicating that must be done that I think is
11 reflected in terms of attitude. And I think that this
12 proceeding has gone on so long that it's understandable that
13 nerves are frayed, and people are tired of responding to
14 questions that they feel they've already responded to, and
15 they're just interested in moving forward.

16 You know, I say that separate and apart from -- I
17 don't have a view that this will all just magically work
18 out. There are constraints that I think you all are aware
19 of with respect to where 709.2 is right now. And I think it
20 becomes critical, you know, at one point testing it legally,
21 if one wants to gauge: is the Commission apt to go along a
22 certain path? If it isn't apt, absolutely, that's whomever
23 feels aggrieved by that -- their right to appeal, move
24 forward, whatever.

25 My interest is in if there is a way for concerns
26 that are integral to each of the parties' here businesses
27 going forward and doing what it is you do short of lengthy

28 litigation, I just encourage that to happen.

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1 Mr. Tobin.

2 MR. TOBIN: That's actually excellent, your Honor. I
3 guess what I would just want to make clear is I don't think
4 Pac-West is here to speak for themselves. So I'll say
5 despite what the lawyers might like to do, I'm sure the
6 company would rather do what you just said than continue to
7 be involved with the lawyers, but they don't perceive there
8 to be a realistic alternative.

9 So one of the useful things I think that the
10 Commission could do was to make what you just said real. We
11 can't make it be real; pretty much, like Mr. Clark said, we
12 don't have the power to do that, but the Commission could.
13 So any way that you can -- any process you can encourage,
14 any structure you can set up for those kinds of things, I
15 think, would be very helpful.

16 I concur with AT&T's comments that you can't just
17 keep talking about generalities. You have to, at some
18 point, get down to things and get them resolved, but I think
19 I really believe the ball should be in Pacific's court on
20 this. It's not the PUC that wants to get into the
21 long-distance business. And I think and the party that has

22 the most to gain here ought to be the party that has the
23 most to lose if they don't come across with fair settlements
24 with people.

25 ALJ REED: Tell me how the Commission can best be the
26 catalyst in this.

27 MR. TOBIN: I don't know if that's a question that's
28 best answered off the top of my head, to be perfectly honest

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1 with you, so maybe if you give us some process for giving
2 you that response, that would be great. We'd be glad to
3 give it to you.

4 ALJ REED: Okay. Okay. I don't like saying this as
5 much as you all don't like hearing it. I would like your
6 comments as soon as possible. Can we talk about when I can
7 hear from you? And that does not have to stop Pacific from
8 making whatever overtures, trying to organize something.

9 And, you know, within this, you know, I say quite
10 frankly, there certainly are enough people that don't
11 believe this can happen. And, you know, because, as I said,
12 I've seen the parties work together on, I think, some very
13 difficult tasks, if there is any possibility it can work, I
14 think the effort should be made, because yes, certainly the
15 litigating can happen, and -- I don't know. I mean, it can

16 all happen very quickly.

17 MR. JOHNSON: I guess, your Honor, in response to
18 that, we heard that Pacific's willing to discuss expedited
19 dispute resolution. We haven't heard that there's any
20 interest in discussing any of the other issues that the
21 competitors have put forth as potential candidates for
22 discussion.

23 ALJ REED: Mm-hm.

24 MR. JOHNSON: And I think that needs to happen. If
25 there's no interest in discussing them, if they prefer to
26 stand on their legal position, which is their right, then
27 there's no sense in us doing much besides saying, "We'll sit
28 down and discuss expedited dispute resolution, and the rest

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1 of it will just have to wait for a legal resolution."

2 ALJ REED: Mr. Kolto.

3 We're off the record for a second.

4 (Off the record)

5 ALJ REED: We're on the record.

6 MR. KOLTO: Your Honor, we're willing to discuss the
7 expedited dispute resolution process if you -- as you've
8 suggested.

9 We're also willing to -- I mean, obviously,

10 encourage enthusiasm about meeting with Commission staff to
11 keep Commission staff informed.

12 We are not, however, amenable to bringing issues
13 in from other proceedings, like the special-access issue and
14 the switched-access-charge issues into this proceeding,
15 particularly in light of the fact that UNE prices have
16 already been lowered dramatically in exchange for these
17 carriers' agreement not to object further in this
18 proceeding. And now they're asking for dramatic reductions
19 on other charges as well. So we would address those in the
20 appropriate proceedings, but we're not willing to address
21 those in this proceeding.

22 MR. SEVERY: I'm puzzled by that last comment, since
23 switched-access charges is not the subject of any ongoing
24 proceeding at the Commission. And long-distance carriers
25 cannot use UNEs to provision access for long-distance
26 service. So that last point, to me -- it was
27 incomprehensible.

28 So our position as to why high switched-access

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1 charges are an impediment or a barrier to fair competition,
2 why that creates a potential -- a substantial possibility of
3 harm in the interexchange market, it's still a valid problem

4 under 709.2, and Pacific doesn't appear to be willing to
5 eliminate that obstacle.

6 ALJ REED: Let me just ask this. You're interested
7 in discussing this -- I mean, I perfectly understand, of
8 course, you want that itself. Is there any -- is there any
9 place short of that that would be of interest to you in
10 terms of discussing it with Pacific?

11 MR. JOHNSON: There there's lots of variations on the
12 theme on the access question.

13 ALJ REED: Mm-hm.

14 MR. JOHNSON: You've got the NIC charge. You've got
15 the question of whether the minute-of-use charges are priced
16 appropriately, or whether they should be priced at the rates
17 in the UNE case, and whether -- heck. At this point, we'll
18 take the OANAD UNE minute-of-use charges, because they're
19 significantly lower than what we're paying today for
20 intrastate access.

21 So there's a lot of variations on the theme that
22 you can go for, short of -- you know, my all-time wish list
23 is to get them to cost. And that's not even today's
24 switched UNE rate. And it certainly doesn't include the NIC
25 and the TIC, but I've got -- you know, anything -- anything
26 is an improvement over where we're at today.

27 ALJ REED: Okay. Now in this -- I'm trying to flesh
28 this out as best I can. In this, are you seeking that these

1 particular issues be pulled in here and resolved, or are you
2 seeking at least some understanding about how, in the
3 proceeding where the issue belongs, timing --

4 MR. SEVERY: The way the issue arose -- and we raised
5 it pretty extensively in our comments last summer, 2001, and
6 we attached a pretty lengthy declaration laying it out. The
7 legal issue is: is there any substantial possibility of
8 harm in the long-distance market?

9 And we identified excessive switched-access
10 charges as a primary example of that.

11 And the Commission has to determine under the law
12 that there is no substantial possibility of harm to
13 competition.

14 And in our view, until the problem of excessive
15 access charges is addressed and resolved, the Commission is
16 precluded from making that legal determination. So that
17 needs to be fixed. And that's why I said earlier if the
18 access-charge issue could be alleviated, addressed, and
19 resolved -- and, as Ms. Johnson said, that there are a
20 number of ways that that can be accomplished -- then that
21 would alleviate that issue, in our opinion, under 709.2.

22 ALJ REED: Mr. Tobin.

23 MR. TOBIN: Yes, your Honor. I'd like to interject
24 something here, because I think it's important from the
25 point of view of Pac-West and Working Assets.

26 The relief that Commissioner Brown spoke about in

27 the earlier stage of this proceeding dealing with the
28 reduction of UNEs was clearly a good thing, and not anything

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1 that I at all want to intimate we don't support, but it does
2 absolutely nothing for the business plan of either Pac-West
3 or Working Assets. They don't resell these UNEs.

4 ALJ REED: Mm-hm.

5 MR. TOBIN: We put forth in our 709.2 case -- the
6 affirmative case that we filed -- three general categories
7 of relief. One was structural separation. One was neutral
8 PIC administration. And the third was various proposed
9 specific -- very specific joint marketing constraints.

10 The Commission did not elect to follow through in
11 a meaningful way on those three specific requests. So
12 that's as important to parties in this proceeding -- and I
13 suspect that Pac-West and Working Assets would not be harmed
14 at all if access charges were lower. I happen to agree with
15 WorldCom and AT&T's position on that, but I just want to
16 make it clear that that's not -- that's not, like in this
17 proceeding the first time around, to be the sole issue that
18 will make competition work here.

19 ALJ REED: Okay. Thanks.

20 Mr. Kolto, in Pacific's comments, there was a

21 discussion of the various federal and state rules and
22 provisions that Pacific is bound to comply with.

23 In the comments that you all will be submitting
24 -- and we'll work out a date on that -- it would be helpful
25 if you could address within those which ones speak to
26 competition within the interexchange market, as apart from
27 those that speak to competition on the local level.

28 And I believe in one section, the discussion of

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1 the requirements was a textual one that didn't refer to what
2 particular rule, code section, or whatever. That would be
3 helpful as well.

4 All righty. If you all could help me out in
5 terms of helping me come up with a time line on this in
6 terms of at least the comments, as I said, it would be
7 helpful if you all speak to each other as soon as possible.
8 You don't have to wait until after the comments are filed.]

9 MR. KOLTO: Your Honor, if I can ask for a
10 clarification. We're commenting on your proposal today set
11 forth in this PHC?

12 ALJ REED: Yes. And as we discussed, I asked you a
13 question, and you said you just needed a little more time
14 you didn't want to respond off the cuff. You wanted a

15 little more time to sort of think and formulate.

16 All right. How about a week from today?

17 MS. JOHNSON: I'm not clear on exactly what these
18 comments are supposed to do. Are we confining ourselves to
19 the issue of expedited dispute resolution or the broader
20 issue how this collaboration can move forward on a broader
21 set of issues that Pacific's unwilling to discuss?

22 ALJ REED: Well, specifically on expedited dispute
23 resolution. You certainly can talk about the other issues
24 of concern, that is fine.

25 MR. CLARK: Are you suggesting that the comments
26 be -- or describe a design for the dispute resolution
27 process?

28 ALJ REED: Well, I don't think the comments need

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1 to -- I don't think that they need to do that. You don't
2 have to file any comments.

3 My hope is that Pacific will be contacting those
4 of you that want to discuss the issue of expedited dispute
5 resolution, and you will kind of go forward on that. In
6 terms of people who want to at least raise, again, the
7 issues that they have of concern, that is fine.

8 MR. KOLTO: Is there a page limit? Just so we're all

9 playing by the same rules.

10 ALJ REED: Well, why don't we focus on about 25, not
11 beyond that. You don't have to do that.

12 (Laughter)

13 ALJ REED: You can certainly submit comments; it
14 could be one, two pages. But if you feel verbose, you can
15 fill 25 pages. It would be helpful to me if I could see
16 those by November 14.

17 MS. JOHNSON: That is next Thursday?

18 ALJ REED: Yes.

19 Someone asked me before we got on the record what
20 phase this was, I said this is probably the vampire phase.

21 (Laughter)

22 ALJ REED: I personally think this is probably my
23 most challenging task to date in this proceeding. We'll
24 move forward and see what we can do, and I'm sure I will --
25 I hope I don't have to see you all again on this, but I
26 certainly am prepared to.

27 If you feel it would be helpful for Staff to
28 facilitate this in some way to kind of, as I said, be a

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1 catalyst on this in some way, let me know.

2 Mr. Tobin.

3 MR. TOBIN: I'm just a little puzzled here. I know
4 we are going to file comments and that Pacific could contact
5 parties to seek resolution of the various issues. What
6 happens? Why are we filing the comments? What is going to
7 happen if AT&T's hypothetical in fact plays out, which is
8 important issues are not considered to be on the table?
9 What happens? Do we report back to you? Is there some kind
10 of another prehearing conference in six weeks? What do you
11 have in mind?

12 ALJ REED: Well, I certainly would like you to advise
13 me if things do not seem like they're working out sooner as
14 opposed to later.

15 I do have to tell you that the Commission has in
16 mind -- and I think that Commissioner Brown laid out sort of
17 his thinking on how he felt 709.2 should go forward. If I
18 don't feel -- and one of the reasons I'm saying that is if
19 you want me to be the task master to set dates and make sure
20 that there is follow through, I certainly can do that. I do
21 know that, you know, I've seen you all in enough proceedings
22 where you can follow through on that kind of stuff yourself.

23 I do think if the Commission does not feel that
24 there is any movement -- maybe movement is not the right
25 word -- if there is no interest in kind of working through,
26 how the safeguards could be productive, how they can
27 mitigate the potential harms, I think that the Commission is
28 going to look at safeguards and propose that they be the

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1 ones in place. Certainly you all would be looking at that
2 draft, and commenting on that and we will be moving from
3 there.

4 Are there any other questions?

5 (No response)

6 ALJ REED: Thank you.

7 (Whereupon, at the hour of 4:35 p.m.,
8 this prehearing conference.)

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